

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

PNC BANK, N.A.,

Plaintiff,

v.

TWIN TIER DEVELOPMENT GROUP,
INC, et al.,

Defendants.

CIVIL ACTION NO. 3:10-CV-2020

(JUDGE CAPUTO)

MEMORANDUM ORDER

Presently before the court are Plaintiff PNC Bank's motions for default judgment against the defendants. (Docs. No. 12, 13, 14.) Because it appears that proper service was never effected, the motions will be denied.

PNC Bank amended its complaint twice before effecting service upon the defendants. However, its affidavits suggest that on November 19, 2010, the defendants were personally served with a copy of the *original* complaint and summons, even though by then PNC Bank had filed its second amended complaint with the court. On November 22, 2010, PNC Bank mailed a copy of the second amended complaint by first class mail to the defendants.

When a complaint is amended *after* the original complaint has been served on the defendant, the amended complaint must only be served in accordance with Federal Rule of Civil Procedure 5(b), and service by mail is valid. However, where the original complaint has been amended before service, the amended version must be served with the summons. 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1093. "It is well settled that when a plaintiff files an amended petition the original petition is abandoned and

becomes a mere 'scrap of paper' insofar as the case is concerned." *Leis v. Mass. Bonding & Ins. Co.*, 125 S.W.2d 906, 908 (Mo. Ct. App. 1939). The effect of filing an amended complaint is to withdraw the original complaint. See *Phillips v. Murchison*, 194 F. Supp. 620, 622 (D.C.N.Y. 1961) (internal citations omitted).

Federal Rule of Civil Procedure 4(c) provides that "[a] summons must be served with a copy of the complaint." Here, PNC Bank "did not serve the then-complaint upon the defendant[s] . . . but served a superseded complaint which was then no more than a mere 'scrap of paper' insofar as the case is concerned." *Phillips*, 194 F. Supp. at 622 (quoting *Leis*, 125 S.W.2d at 908). Thus, service in accordance with Rule 4 has not been effected and a default cannot be entered. See *Wright & Miller*, *supra*, § 1093.

IT IS HEREBY ORDERED that PNC Bank's motions for entry of default and default judgment (Docs. No. 12, 13, 14) are **DENIED**.

December 20, 2010
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge